SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000512 08/13/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

STATE OF ARIZONA DOUGLAS W JANN

v.

EDWARD T REMBALSKI DANNY L LOWRANCE

PHX JUSTICE CT-WEST
REMAND DESK-LCA-CCC

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial court, exhibits made of record and the memoranda submitted.

In the case at hand, a deputy for the Maricopa County Sheriff's Office witnessed Appellant, Edward T. Rembalski, an inmate out of jail on work release, pull into the work release parking lot of the Con-Tents facility. Just after Appellant exited his vehicle, the deputy asked Appellant for his driver's license in an effort to ensure that Appellant could lawfully park in the lot specifically designated for work release inmates. Appellant informed the deputy that he didn't have his license with him. The deputy then discovered that Appellant's driver's license had been revoked, had no proof of insurance or registration, and had failed to have an ignition interlock device on his vehicle, as required due to Appellant's past DUI convictions. Appellant was cited for: 1) driving on a suspended license for DUI; 2) Driving without an ignition interlock system; 3) No proof of financial responsibility; and 4) No vehicle registration in the automobile.

Appellant's counsel subsequently filed a motion to suppress the evidence collected based on the claim that the deputy violated Appellant's Fourth Amendment right against unlawful searches. The Phoenix Justice Court – West denied the motion, then asked both Appellant's counsel and the prosecutor if they wished to present any further evidence or testimony on the

motion. Appellant's attorney did not request additional testimony, but instead orally argued that Appellant's Fourth Amendment rights had been violated. The Phoenix Justice Court – West disagreed and maintained its denial of Appellant's motion to suppress. Appellant was found guilty of all four charges.

The first issue before this court is whether the trial court abused its discretion by ruling upon a motion to suppress without a hearing. The State correctly argues that under Rules 16.3(b) and 35.2 of the Arizona Rules of Criminal Procedure, the court *may* set any motion for hearing, and the court may limit or deny oral argument on any motion.The language of the rules is permissive, not mandatory, allowing a trial judge to exercise discretion on the matter. Denying a motion to suppress (or an evidentiary hearing on a motion to suppress) will not be reversed in the absence of a clear abuse of discretion.[1] I find no abuse of discretion by the trial judge in his denial of the requested evidentiary on the motion to suppress.

The second issue on appeal is whether, from the facts alleged by both parties' in their pleadings, the deputy violated Appellant's Fourth Amendment[2] right against unlawful searches and seizures. The facts do not appear to be in dispute in this case. It is well established that a stop is not warranted unless the officer had reasonable suspicion to believe that criminal activity was afoot.[3] However, Appellant waived his Fourth amendment rights and implicitly consented[4] to the search and seizure when he drove into the parking lot that bore the sign reading:

> "You are entering Maricopa County Sheriff's Office Property.
> **All persons and vehicles are subject to search**."
> [Emphasis added]

In *State v. White*,[5] a passenger claimed his Fourth Amendment rights had been violated, as the search and seizure was unconstitutional. Here, the court ruled that the passenger's consent to the search could be implied where boarding signs clearly informed him that his luggage was subject to search. This is a perfect parallel to the case at hand, and I will make a ruling consistent with the rationale in *State v. White*. This type of search, to be consistent with the effectuation of the administrative goal that justifies it, must be limited in its intrusiveness.[6] To ask one for their driver's license to ensure that they were lawfully permitted to park in a lot set aside for inmates on work release is far from intrusive. Once Appellant was found to be driving on a suspended license, the deputy inquired as to proof of insurance and registration, which is standard procedure for law enforcement officers. Nothing in the record suggests that the officer violated Appellant's Fourth Amendment right against unreasonable searches and seizures. The

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[1] *State v. Wright*, 125 Ariz. 36, 607 P.2d 19 (Ariz.App. 1979).
[2] U.S. Constitution.
[3] *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (U.S.Ohio, 1968).
[4] *State v. White*, 26 Ariz.App. 505, 549 P.2d 600 (Ariz. 1976); Also see *U.S. v. Edwards*, 498 F.2d 496 [2nd Cir.(N.Y.) 1974].
[5] 26 Ariz.App. 505, 549 P.2d 600.
[6] *Id* at 510, 549 P.2d at 605.

test of the constitutionality of a search is whether it was reasonable under the circumstances.[7] Under the circumstances, the search was very reasonable and the reasonable prudent person would have anticipated such a search after reading the sign posted in the entrance to the parking lot.

IT IS THEREFORE ORDERED affirming the findings of guilt and sentences imposed by the Phoenix Justice Court - West.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix Justice Court - West for all further, if any, and future proceedings.

/S/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

[7] *State v. Carroll*, 111 Ariz. 216, 526 P.2d 1238, (Ariz. 1974).